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EXAMINER

AKINTOLA, OLABODE

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6

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8 *Ex parte* DUSHYANT SHARMA
9

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11 Appeal 2008-3804
12 Application 09/751,265
13 Technology Center 3600
14

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16 Decided: December 2, 2008
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19 Before ANTON W. FETTING, DAVID B. WALKER, and
20 BIBHU R. MOHANTY, *Administrative Patent Judges*.
21 FETTING, *Administrative Patent Judge*.
22

23
24 DECISION ON APPEAL
25

26 STATEMENT OF THE CASE

27 Dushyant Sharma (Appellant) seeks review under 35 U.S.C. § 134 of a
28 non-final rejection of claims 1-20, the only claims pending in the application
29 on appeal.

30 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)
31 (2002).

1 We AFFIRM.

2

3 The Appellant invented a way for integrated electronic bill presentment
4 and payment among billers, consumers, banks and other financial
5 institutions in electronic commerce (Specification 1:3-7).

6 An understanding of the invention can be derived from a reading of
7 exemplary claim 1, which is reproduced below [bracketed matter and some
8 paragraphing added].

9 1. An electronic bill presentment and payment system,
10 comprising:

11 [1] a database

12 capable of storing data relating to a plurality of bills
13 sourced from a plurality of billers, and
14 corresponding to a plurality of consumers;

15 [2] a bill data processor coupled to said database,
16 said bill data processor being capable of converting data
17 received from said plurality of billers
18 into a format compatible with said database;

19 [3] a bill report processor coupled to said database,
20 said bill report processor being capable of allowing at
21 least some of said plurality of billers
22 to review and obtain reports in real time from
23 data relating to said billers and
24 the status of said biller's bills stored in said
25 database;

26 [4] a bill security element
27 which prohibits access to said database
28 by any entity not having encrypted access to said
29 database; and

1 [5] a portal interface element coupled to said database,
2 said portal interface element being capable of supporting
3 a plurality of visual interfaces
4 each associated with a different web portal or bill
5 presentment and payment website,
6 each visual interface being supported by a web
7 portal or bill presentment and payment website
8 different from other of said visual interfaces,
9 each of said visual interfaces allowing a consumer
10 to review and pay said consumer's bills and
11 thereby change information in said database
12 only if said consumer has been authorized
13 access to said database by a credit verifier.

14 This appeal arises from the Examiner's non-final Rejection, mailed
15 December 27, 2006. The Appellant filed an Appeal Brief in support of the
16 appeal on June 21, 2007. An Examiner's Answer to the Appeal Brief was
17 mailed on October 4, 2007. A Reply Brief was filed on December 4, 2007.

18 PRIOR ART

19 The Examiner relies upon the following prior art:

Kamen	US 6,421,067 B1	Jul. 16, 2002
Haseltine	US 6,578,015 B1	Jun. 10, 2003

20 REJECTIONS

21 Claims 1-16 and 18-20 stand rejected under 35 U.S.C. § 102(e) as
22 anticipated by Haseltine.

23 Claim 17 stands rejected under 35 U.S.C. § 103(a) as unpatentable over
24 Haseltine and Kamen.

ISSUES

The issues pertinent to this appeal are

- Whether the Appellant has sustained its burden of showing that the Examiner erred in rejecting claims 1-16 and 18-20 under 35 U.S.C. § 102(e) as anticipated by Haseltine.
- Whether the Appellant has sustained its burden of showing that the Examiner erred in rejecting claim 17 under 35 U.S.C. § 103(a) as unpatentable over Haseltine and Kamen.

The pertinent issues turn on whether Haseltine describes a system having the capabilities recited in argued claims.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Haseltine

01. Haseltine is directed to electronically presenting bills to customers while preserving the billers' corporate identity, as embodied in the "look-and-feel" of the bills presented to customers (Haseltine 2:57-61).

02. Haseltine's billers have the option of transmitting bill data and bill format data to an electronic presentment and payment database. The bill data may include a customer identifier, an amount due and a date due for each of the biller's customers that have opted to pay their bills electronically. The bill data stream may be coded according to any number of formats such as the

1 Open Financial Exchange (OFX) format, ASCII, eXtensible
2 Markup Language (XML), print streams or other legacy or
3 proprietary formats. The bill format data may include HTML-
4 formatted data configured to mimic the "look-and-feel" of the
5 biller's traditional paper bills, when rendered on a display device.
6 Alternatively, or in addition to HTML, the bill format data may
7 include functionality programmed in Extensible Markup
8 Language (XML) (Haseltine 4:53 – 5:29).

9 03. A bill data validation procedure may be carried out to insure the
10 integrity of the bill data 402 transmitted by the biller. This
11 validation procedure may include, for example, verification of the
12 customer's identity, verification of the integrity of the transmitted
13 data and/or verification that all required fields (such as amount
14 and/or date due, for example) have been properly populated
15 (Haseltine 5:43-49).

16 04. Haseltine provides status tables that may be viewed by
17 customers. As the name implies, the status tables track the status
18 of the bills presented to the customers such as whether a
19 customer's bills have been viewed, paid, have been submitted or
20 are pending. Other indicia indicative of the status of the
21 customers' bills may also be included in the status tables
22 (Haseltine 6:10-21).

23 05. Haseltine allows customers to dispute bills by sending a
24 message to a customer service representative. The biller of the
25 disputed bill may then log onto the system and take appropriate
26 action (Haseltine 6:22-26).

1 06. Haseltine provides a template manager when the customer logs
2 on to view his or her bills. Haseltine describes a template selection
3 rule that compares the system date (i.e., the present date) with the
4 bill due date and causes the template manager to select a biller-
5 specific "overdue bill template" when the system date is greater
6 than the bill due date and a "current bill template" otherwise. The
7 template manager may also evaluate Boolean expressions such as
8 AND, OR, etc. to select a template that is appropriate to the bill
9 data (Haseltine 8:28-40).

10 07. Haseltine allows a customer to log onto a Web site of a biller
11 through the Internet via an HTML Secure Sockets Layer (SSL),
12 which is a high-level security protocol that insures security of data
13 transmitted over the Internet, and is well known and used by many
14 commerce servers on the Web. Popular Web Browsers currently
15 support SSL, with varying levels of encryption. In this case, the
16 biller may maintain a database 400 (FIG. 4) in an appropriate
17 server. Alternatively, the biller may have in-house payment
18 processing capabilities, in which case the customer directly logs
19 onto the Web site of the biller to view and/or pay his or her bills
20 for that biller (Haseltine 9:51- 10:10).

21 08. Haseltine describes how bill consolidators exist, which allow
22 customers to electronically log onto a single site on the Web and
23 pay bills originating from a number of individual billers. Such
24 consolidators may be generally categorized as thin consolidators
25 or thick consolidators. Thin consolidators typically carry only bill
26 summaries and refer the customer to the biller's own Web site for

1 further detailed bills and/or further customer service, such as to
2 discuss a disputed bill. Thick consolidators typically carry the
3 biller's entire customer data and often act as their own payment
4 processors (Haseltine 2:30-49). Haseltine allows thick and/or thin
5 consolidators to preserve the "look-and-feel" of their billers' bills
6 while providing the customer with a flexible and integrated bill
7 presentment and payment infrastructure (Haseltine 10:11 – 11:22).

8 09. Haseltine's system allows generating reports to billers and
9 administrators (Haseltine 12:22-25).

10 10. Haseltine describes using input devices, such as a fingerprint
11 reader, a retina scanner and/or other biometric information
12 measuring and/or acquiring devices to assist in the authentication
13 of customers to the electronic bill presentment and payment
14 database (Haseltine 13:15-22).

15 *Kamen*

16 11. Kamen is directed to a television electronic programming guide
17 (EPG) with a graphic interface (Kamen 1:3-4; 3:12-23).

18 12. Kamen describes a user modifying the surfaces of EPG graphic
19 elements. This alteration of the video surface can be in the form of
20 zooming in on the video surface by changing its position in virtual
21 3D space or changing the color of the video surface by changing
22 specular, ambient, and directional lighting. By altering the various
23 video and data surfaces, the surfaces (including pictograms) can
24 be observed from different perspectives. This facilitates a viewer

zooming in on the various pictograms to better identify what kind of program they represent (Kamen 3:50-67).

Facts Related To The Level Of Skill In The Art

13. Neither the Examiner nor the Appellant has addressed the level of ordinary skill in the pertinent arts of systems analysis and programming, financial transaction systems, and network communication. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error ‘where the prior art itself reflects an appropriate level and a need for testimony is not shown’”) (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

Facts Related To Secondary Considerations

14. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

Claim Construction

During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969); *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

1 Limitations appearing in the specification but not recited in the claim are
2 not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364,
3 1369 (Fed. Cir. 2003) (claims must be interpreted “in view of the
4 specification” without importing limitations from the specification into the
5 claims unnecessarily).

6 Although a patent applicant is entitled to be his or her own lexicographer
7 of patent claim terms, in *ex parte* prosecution it must be within limits. *In re*
8 *Corr*, 347 F.2d 578, 580 (CCPA 1965). The applicant must do so by placing
9 such definitions in the Specification with sufficient clarity to provide a
10 person of ordinary skill in the art with clear and precise notice of the
11 meaning that is to be construed. *See In re Paulsen*, 30 F.3d 1475, 1480
12 (Fed. Cir. 1994) (although an inventor is free to define the specific terms
13 used to describe the invention, this must be done with reasonable clarity,
14 deliberateness, and precision; where an inventor chooses to give terms
15 uncommon meanings, the inventor must set out any uncommon definition in
16 some manner within the patent disclosure so as to give one of ordinary skill
17 in the art notice of the change).

18 *Anticipation*

19 "A claim is anticipated only if each and every element as set forth in the
20 claim is found, either expressly or inherently described, in a single prior art
21 reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628,
22 631 (Fed. Cir. 1987). "When a claim covers several structures or
23 compositions, either generically or as alternatives, the claim is deemed
24 anticipated if any of the structures or compositions within the scope of the
25 claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351 (Fed.
26 Cir. 2001). "The identical invention must be shown in as complete detail as

1 is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d
2 1226, 1236 (Fed. Cir. 1989). The elements must be arranged as required by
3 the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology
4 is not required. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

5 *Obviousness*

6 A claimed invention is unpatentable if the differences between it and
7 the prior art are "such that the subject matter as a whole would have been
8 obvious at the time the invention was made to a person having ordinary skill
9 in the art." 35 U.S.C. § 103(a) (2000); *KSR Int'l Co. v. Teleflex Inc.*, 127
10 S.Ct. 1727, 1729-30 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14
11 (1966).

12 In *Graham*, the Court held that that the obviousness analysis is
13 bottomed on several basic factual inquiries: "[(1)] the scope and content of
14 the prior art are to be determined; [(2)] differences between the prior art and
15 the claims at issue are to be ascertained; and [(3)] the level of ordinary skill
16 in the pertinent art resolved." 383 U.S. at 17. *See also KSR*, 127 S.Ct. at
17 1734. "The combination of familiar elements according to known methods
18 is likely to be obvious when it does no more than yield predictable results."
19 *Id.*, at 1739.

20 "When a work is available in one field of endeavor, design incentives
21 and other market forces can prompt variations of it, either in the same field
22 or a different one. If a person of ordinary skill can implement a predictable
23 variation, § 103 likely bars its patentability." *Id.* at 1740.

24 "For the same reason, if a technique has been used to improve one
25 device, and a person of ordinary skill in the art would recognize that it would

1 improve similar devices in the same way, using the technique is obvious
2 unless its actual application is beyond his or her skill.” *Id.*

3 “Under the correct analysis, any need or problem known in the field
4 of endeavor at the time of invention and addressed by the patent can provide
5 a reason for combining the elements in the manner claimed.” *Id.* at 1742.

6 ANALYSIS

7 *Claims 1-16 and 18-20 rejected under 35 U.S.C. § 102(e) as anticipated by*
8 *Haseltine.*

9 The Appellant argues claims 1, 2, 3, and 5 as a group.

10 Accordingly, we select claim 1 as representative of the group.
11 37 C.F.R. § 41.37(c)(1)(vii) (2007).

12 The Examiner found that Haseltine anticipated claim 1. The Appellant
13 contends that Haseltine fails to describe the report processor, portal interface
14 element, and plural visual interfaces of claim 1 (Br. 8-9). We disagree with
15 the Appellant.

16 *Report Processor*

17 Claim 1 requires the report processor be capable of allowing at least
18 some of said plurality of billers to review and obtain reports in real time
19 from data relating to said billers and the status of said biller's bills stored in a
20 database.

21 Haseltine’s system allows generating reports to billers and
22 administrators (FF 09). The Appellant argues Haseltine has no teaching as
23 to whether data is for billers or biller status. But having data for billers and
24 biller status in Haseltine’s system and the capacity to generate reports,

1 Haseltine's system would be capable of allowing those described reports to
2 access such data. There is no limitation on the manner in which such access
3 is allowed; presence of the required data and the capacity to generate reports
4 based on that data is sufficient to permit such access.

5 *Portal Interface Element and Plural Visual Interfaces*

6 Claim 1 requires a portal interface element capable of supporting a
7 plurality of visual interfaces, each associated with a different web portal or
8 bill presentment and payment website, each visual interface being supported
9 by a web portal or bill presentment and payment website different from
10 other of said visual interfaces

11 There is no limitation regarding the manner of support. The Appellant
12 argues there is no description of a portal interface element or of different
13 visual interfaces (Br. 9). Visual interfaces per se are not recited as part of
14 the claimed structure, only support for them.

15 Haseltine allows a customer to log onto a Web site of a biller through the
16 Internet via an HTML Secure Sockets Layer (SSL), which is a high-level
17 security protocol that insures security of data transmitted over the Internet,
18 and is well known and used by many commerce servers on the Web (FF 07).
19 Such a logon portion of a web site is inherently a portion of the site's portal
20 interface, since the code for an entry into a system such as a logon is a
21 portal. Accordingly, Haseltine describes the portal interface element.

22 Haseltine describes different interfaces for thin consolidators and thick
23 consolidators. Haseltine allows thick and/or thin consolidators to preserve
24 the "look-and-feel" of their billers' bills while providing the customer with a
25 flexible and integrated bill presentment and payment infrastructure (FF 08).

1 Further, Haseltine's bill data stream may be coded according to any
2 number of formats such as the Open Financial Exchange (OFX) format,
3 ASCII, eXtensible Markup Language (XML), print streams or other legacy
4 or proprietary formats. The bill format data may include HTML-formatted
5 data configured to mimic the "look-and-feel" of the biller's traditional paper
6 bills, when rendered on a display device. Alternatively, or in addition to
7 HTML, the bill format data may include functionality programmed in
8 eXtensible Markup Language (XML) (FF 02). All of these have the capacity
9 to support multiple visual interfaces. Accordingly, Haseltine describes the
10 capacity for supporting such plural visual interfaces.

11 *Claims 4, 6, 7, 8, 11, 12, and 18-20*

12 The Appellant separately argued claims 4, 6, 7, 8, 11, 12, and 18-20.

13 Claim 4 requires the bill security element be adapted to utilize a third
14 party credit verifier as said credit verifier. The Appellant argues Haseltine
15 has no reference to a third party verifier (Br. 10-11). Claim 4 only requires
16 capacity for a third party verifier, not the actual use of a third party. Such a
17 capacity would require no more than access to Haseltine's system by a third
18 party, since bill verification itself is one of the functions of Haseltine's
19 system (FF 03). The logon logic we found described in Haseltine *supra*
20 would allow any authorized party, including a third party to access the
21 system as a credit verifier to verify Haseltine's bill data.

22 Claim 6 requires the portal interface element be adapted to employ XML
23 transmissions. The Appellant argues Haseltine describes transmitting
24 HTML, but not XML (Br. 11). Claim 6 requires only the capacity to employ
25 XML transmissions, not the actual transmission of XML. Haseltine's bill

1 format data transmissions may include functionality programmed in
2 Extensible Markup Language (XML) (FF 02). Thus, Haseltine describes the
3 capacity to employ XML transmissions.

4 Claim 7 requires each consumer be authorized access to said database by
5 a credit verifier during a particular consumer session on said visual interface
6 only after an interactive session between the electronic bill presentment and
7 payment system and the credit verifier which occurs during that consumer
8 session. The Appellant argues the absence of a credit verifier precludes such
9 an interactive session (Br. 11-12). The Appellant also argues claims 8-10
10 and 13-16 as a group. Beyond the arguments made in support of claim 1, the
11 Appellant argues that Haseltine fails to describe a portal interface element
12 adapted to initiate an interactive session via a bill security element with a
13 credit verifier to obtain authorization for a consumer to have access to
14 information from a database (Br. 12-13). This is essentially the same
15 argument as in support of claim 7.

16 Haseltine describes an interactive session to obtain customer
17 bioinformatic or other data for accessing the system (FF 10). As we found
18 with claim 4 *supra*, Haseltine has the capacity for using such a third party
19 credit verifier. The third party is not part of the claimed system. Rather
20 claim 7 requires the preclusion from continuing into the system absent the
21 claimed interactive session, which Haseltine's system access logic provides.

22 Claim 11 requires the bill report processor be adapted to allow a
23 consumer to use one of the visual interfaces on a website to inquire online
24 about the status of at least one bill, where the inquiry is conveyed to the
25 particular biller. Claim 12 requires the bill data processor be adapted to
26 allow the system to establish an interactive session between a consumer and

1 the particular biller. The Appellant argues that Haseltine does not describe
2 these limitations (Br. 13-14).

3 Haseltine allows customers to dispute bills by sending a message to a
4 customer service representative. The biller of the disputed bill may then log
5 onto the system and take appropriate action (FF 05). A customer service rep
6 is associated with a biller. A message is adapted to allow any inquiry,
7 including a status inquiry. The claim only requires the capacity for such an
8 inquiry. We find that Haseltine thus describes such a capacity.

9 Claim 18 requires the bill report processor be adapted to allow a
10 consumer to select for review bills coming due on a certain date. Claim 19
11 requires the bill report processor be adapted to allow a consumer to select for
12 review bills overdue. The Appellant argues these features are not described
13 by Haseltine (Br. 14-15).

14 Haseltine describes a template selection rule that compares the system
15 date (i.e., the present date) with the bill due date and cause the template
16 manager to select a biller-specific "overdue bill template" when the system
17 date is greater than the bill due date and a "current bill template" otherwise.
18 The template manager may also evaluate Boolean expressions such as AND,
19 OR, etc. to select a template that is appropriate to the bill data (FF 06).
20 Thus, Haseltine explicitly describes allowing review of overdue bills and
21 describes the tools necessary to allow a consumer to select for review bills
22 coming due on a certain date.

23 Claim 20 requires the portal interface element be adapted to allow a
24 consumer to pay bills from a plurality of different visual interfaces, each on
25 a different site. The Appellant argues Haseltine fails to describe this (Br. 15-

16). We found that Haseltine described the capacity to use a plurality of different visual interfaces and a portal to access different sites in our analysis of claim 1 *supra*.

The Appellant has not sustained its burden of showing that the Examiner erred in rejecting claims 1-16 and 18-20 under 35 U.S.C. § 102(e) as anticipated by Haseltine.

Claim 17 rejected under 35 U.S.C. § 103(a) as unpatentable over Haseltine and Kamen.

Claim 17 requires the portal interface element be adapted to allow a consumer to modify, online, the format in which a bill is presented on a visual interface. The Examiner found that Kamen described allowing a user to so modify graphics (Answer 13-14). The Appellant argues that Kamen does not use bills or report processors (Br. 16-17).

The Appellant responds to the rejection by attacking the references separately, even though the rejection is based on the combined teachings of the references. Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

The Appellant has not sustained its burden of showing that the Examiner erred in rejecting claim 17 under 35 U.S.C. § 103(a) as unpatentable over Haseltine and Kamen.

CONCLUSIONS OF LAW

The Appellant has not sustained its burden of showing that the Examiner erred in rejecting claims 1-16 and 18-20 under 35 U.S.C. § 102(e) as anticipated by Haseltine, or in rejecting claim 17 under 35 U.S.C. § 103(a) as unpatentable over the prior art.

DECISION

To summarize, our decision is as follows:

- The rejection of claims 1-16 and 18-20 under 35 U.S.C. § 102(e) as anticipated by Haseltine is sustained.
- The rejection of claim 17 under 35 U.S.C. § 103(a) as unpatentable over Haseltine and Kamen is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

vsh

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